

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BENJAMIN AIKEN,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-14-1609
	§	
CITIMORTGAGE, INC.,	§	
	§	
Defendant.	§	

ORDER

Pending before the court is Defendant, CitiMortgage's Motion to Dismiss and Brief in Support of Same (Docket Entry No. 4) to which plaintiff Benjamin Aiken has filed Plaintiff's Response (Docket Entry No. 9) and CitiMortgage has filed Defendant's Reply (Docket Entry No. 10). Plaintiff states in his Response:

In the alternative, if the court determines that Plaintiff has failed to state a claim, Plaintiff requests leave of this Court to amend Plaintiff's pleading.


(Docket Entry No. 9 at p. 12)

Many of the causes of action asserted in plaintiff's Original Petition, Application for Temporary Restraining Order and Temporary Injunction and Request for Disclosures filed in state court on June 2, 2014 (Exhibit 4 to Defendant's Notice of Removal, Docket Entry No. 1-4), appear to have no merit in light of previous opinions of this court and the United States Court of Appeals for the Fifth Circuit. Nevertheless, since this action was originally

filed in state court, the court will afford plaintiff an opportunity to amend.

Accordingly, plaintiff is **ORDERED** to file an amended complaint within thirty (30) days from the entry of this Order. The amended complaint will not allege any cause of action that this court or the United States Court of Appeals for the Fifth Circuit has held to have no merit in previous orders or opinions. CitiMortgage's Motion to Dismiss (Docket Entry No. 4) is **DENIED WITHOUT PREJUDICE**. If after reviewing plaintiff's amended complaint CitiMortgage believes that one or more of plaintiff's causes of action have no merit, CitiMortgage may file a properly supported motion for summary judgment at a time to be established at the October 3, 2014, Initial Pretrial and Scheduling Conference.

SIGNED at Houston, Texas, on this 6th day of August, 2014.



SIM LAKE
UNITED STATES DISTRICT JUDGE